

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

EVERY CONTRACTING, LLC,)	No. ED101592
)	
Appellant,)	Appeal from the Circuit Court
)	of Jefferson County
vs.)	
)	
RICHARD NIEHAUS, LISA J. NIEHAUS)	Honorable Nathan B. Stewart
ALICIA NIEHAUS, CREEKSTONE)	
HOMEOWNERS ASSOCIATION, and)	
MISSOURI HIGHWAYS AND)	
TRANSPORTATION COMMISSION,)	
)	
Respondents.)	FILED: April 14, 2015

Appellant Avery Contracting, LLC (“Avery”) appeals from the judgment of the trial court dismissing its lawsuit against Respondent Missouri Highways and Transportation Commission (“MHTC”) and Respondents Richard, Lisa, and Alicia Niehaus and Creekstone Homeowners Association (collectively referred to as “the Creekstone parties”). Avery filed a petition in the trial court seeking the creation of a private roadway through neighboring property in order to provide access from a landlocked parcel owned by Avery to a public road, Route M. On appeal, Avery argues that the trial court erred in granting the Creekstone parties’ motion to dismiss and in granting MHTC’s motion to dismiss.

AFFIRMED.

Division III holds: Because Avery failed to allege all of the required elements to establish a cause of action under Section 228.342 for a private roadway of necessity, we affirm the judgment of the trial court granting the Creekstone parties’ motion to dismiss. Because Chapter 228 does not allow for the establishment of a private roadway of necessity over public land, we affirm the judgment of the trial court granting MHTC’s motion to dismiss.

Opinion by: Kurt S. Odenwald, P.J., Robert G. Dowd, Jr., J. and Gary M. Gaertner, Jr., J. Concur.

Attorney for Appellant: Phillip K. Gebhardt

Attorney for Respondent RICHARD NIEHAUS, et al.: Andrew T. Drazen

Attorney for Respondent MHTC: John Koenig, Bryce Gamblin and Rich Tiemeyer

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.
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